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(2436-191)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	BEFORE THE BOARD OF PATENT
)	APPEALS AND INTERFERENCES
Charles W. ALVORD et al.)	
)	Appeal No.:
Serial No. 10/671,086)	
)	Examiner: Daniel L. Greene
Filed: September 25, 2003)	
)	Group Art Unit: 3694
For: TANTALUM WATER TARGET)	
BODY FOR PRODUCTION)	November 21, 2007
OF RADIOISOTOPES)	

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a reply to the new points of argument in the Examiner's Answer dated September 21, 2007.

ARGUMENT

The Rejection of Claims 37, 38, 40-44 and 46-49 Is Improper

As established in Appellants' main brief on appeal, the APA target assembly contains cooling channels 302, 304 formed on the outside of target body 110 on the outer circumferential surface thereof. See Figs. 2 and 3 of the present application. The Examiner's Answer takes the position that "the cooling channels are indeed within the

target body when the outer physical limits of the target body of the prior art are considered as the boundaries defining said target body.”

The issue for decision by the Board is thus whether there exists a rational and proper basis for the Examiner to interpret the prior art target assembly body as including the edges of the rings 308 in which open channels 304 are formed (see Fig. 3), when the specification itself defines the target assembly as “having cooling channels 102, 104, 202, 204, 302, 304 along the outside surface of the target assembly 110.”

Published Application at paragraph 0011.

Claim language is to be interpreted in light of the specification as it would be by those skilled in the art. Additionally, Applicants are entitled to be their own lexicographer. One skilled in the art reading the present specification would thus understand from the specification that the prior art target assembly has cooling channels formed on the outside surface of the target assembly and not within the target assembly. The distinction between these two different regions is further confirmed by the description of the target chamber 104’ as extending into the target assembly 10.

Published Application at paragraph 0032.

The Examiner’s Answer explains no basis for the interpretation of the target body as including the outer edges of the channels 304 surrounding it. The Examiner’s Answer provides no evidence that anyone of skill in the art would interpret the target body as including the channels formed on the outer peripheral external surface of the target body; rather, the Examiner’s Answer simply states that Appellants’ interpretation

does not define over the prior art when the outer edges of the external channels are considered as the boundaries defining the target body. However, no reasoning is provided as to why such an interpretation would be reasonable, especially in view of the fact that it is in direct contradiction with the specification itself.

Here, there is no genuine dispute that the structure of the present invention as disclosed is physically different from the prior art structure. Appellants have fully disclosed the prior art structure and described how the present invention differs from that structure, using plain, unambiguous language: the prior art cooling channels are formed outside the target body, whereas the invention provides cooling channels formed within the target body. This clear difference is tracked in the claim language. The Examiner's steadfast refusal to recognize this straightforward difference presents an impossible situation in which Appellants are prohibited from distinguishing their inventive structure from clearly different prior art structure despite use of claim language that correlates with the corresponding disclosures in the specification.

Further, under the doctrine of prosecution history estoppel, Appellants would be precluded from attempting to assert that the claims cover the prior art structure as disclosed in the present application. There thus appears to be no rationale underlying the Examiner's strained claim construction other than to deny the allowability of the claims.

The same steadfast refusal to recognize clear, unambiguous structural distinctions applies to the Examiner's interpretation of the Satyamurthy reference. The

Examiner's Answer must resort to microscopic parsing and dissection of the simple, straightforward term "end" in order to maintain an argument that the cooling channel inlet of Satyamurthy is at a different end of the target body than the cooling channel outlet.

CONCLUSION

In summary, the Examiner's Answer fails to establish that there is any reasonable or rational basis for the strained constructions of language. Instead of being based on a reasonable interpretation in light of the specification and understanding of those skilled in the art, the definitions and claim constructions relied on in the rejections are based solely on an attempt to read the claims on the prior art.

In view of the foregoing and the arguments in the main brief filed May 30, 2007, claims 37-49 are submitted to be directed to a new and unobvious water target assembly, which is not taught by the prior art. The Honorable Board is respectfully requested to reverse all grounds of rejection and to direct the passage of this application to issue.

Please charge any fee or credit any overpayment pursuant to 37 CFR 1.16 or 1.17 to
Novak Druce Deposit Account No. 14-1437.

Respectfully submitted,

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